

BAKER DECLARATION

EXHIBIT CK

EXHIBIT A



U.S. Immigration and Customs Enforcement

August 1, 2018

VIA EMAIL

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Re: *Ugochukwu Goodluck Nwauzor et. al v. The Geo Group*
WDWA No. 17-5806-RJB

Counsel,

It has come to our attention that a declaration, executed by former Immigration and Customs Enforcement (ICE) employee Tracey Valerio, was submitted in this action in violation of 6 C.F.R. §§ 5.41-5.49, commonly referred to as *Touhy* regulations. *See generally United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951). The filing appears to have been made on July 20, 2018. The *Touhy* regulations are an absolute condition precedent to obtaining testimony or other information from a Department of Homeland Security (DHS) employee of which ICE is a component, and the regulations must be complied with before the DHS or ICE may respond to any such request. *See United States v. Soriano-Jarquin*, 492 F.3d 495 (4th Cir. 2007); *Ho v. United States*, 374 F.Supp.2d 82 (D.D.C. 2005); *Boeh v. Gates*, 25 F.3d 761 (9th Cir. 1994).

Section 5.43 of the DHS *Touhy* regulations requires that service of subpoenas, court orders, and other demands or requests for official information be served on the DHS Office of the General Counsel (OGC). DHS OGC has delegated this responsibility to its components. The enacted regulations govern the release of testimony or information in the custody and control of the Department, or was acquired by Department employees, or former employees, as part of their official duties or because of their official status within the Department while such individuals were employed by or served on behalf of the Department. *See* 6 C.F.R. § 5.41(e).

Further, DHS regulations bar all DHS employees, including former employees, from *inter alia* providing responses to questions by attorneys in situations involving litigation regarding any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired while the subject of the request for information is or was employed by DHS, unless authorized to do so by the DHS Office of General Counsel or its designees. *See* 6 C.F.R. § 5.44.

As Ms. Valerio was not authorized to speak on behalf of the agency or provide the information contained in the declaration submitted, ICE objects to the submission of the declaration to the extent that it purports to be provided on behalf of the agency or express agency views.

Sincerely,

/s/ Anne M. Rose

Anne M. Rose
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